



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable J. Watt Page  
Adjutant General  
Austin, Texas

Dear Sir:

Opinion No. 0-4865

Re: Expenditure of deficiency  
allowances after conven-  
ing of Legislature; and  
related questions

You request our opinion upon the following  
questions:

(1) May deficiency expenditures authorized  
by the Governor under Article 4351 be expended after  
the Legislature has convened?

(2) May the Legislature appropriate moneys  
to pay obligations incurred before the appropriation  
to pay for same is made?

Your first question is answered in the nega-  
tive. Article 4351 authorizes the Governor to create  
deficiency allowances only in such amounts as are neces-  
sary to meet the needs of the Department "until the  
meeting of the next Legislature." It follows that the  
deficiency allowance is not available for expenditure  
after the Legislature convenes. See Opinions 0-2118  
and 0-2924, copies of which are attached.

Your second question is likewise answered in  
the negative. Article 3, Sec. 44 of the Constitution  
provides in part:

"The Legislature . . . shall not . . .  
grant, by appropriation or otherwise, any  
amount of money out of the Treasury of the  
State, to any individual, on a claim, real  
or pretended, when the same shall not have  
been provided for by pre-existing law. . . ."

Honorable J. Watt Page - page 2

A public officer whose appropriations are exhausted can not bind the State for subsequent expenditures. His authority to contract is only within the limit of the funds which the Legislature has authorized him to expend. Any greater expenditure is without authority of law. Expenditures in excess of those authorized in advance by the Legislature are made without authority of "pre-existing law", and under Section 44, Article 3 of the Texas Constitution, the Legislature can not appropriate moneys to pay such claims. Fort Worth Cavalry Club v. Sheppard (Sup. Ct.) 83 S. W. (2) 660.

Perhaps these rules may seem harsh. But it must be remembered that the people of Texas have committed to the Legislature, rather to the subordinate officers and departments of the government, the authority to determine how much money should be expended for carrying on the functions of government. It is within the power of the Legislature to provide additional funds immediately for the continued operation of your Department by emergency legislation. If it considers that additional funds are necessary, doubtless it will do so. Failure to provide such funds will reflect, of course, the judgment of the Legislature that additional funds are not required. In either event, the Legislature's decision is final. The theory that the Legislature may not choose to provide immediate relief can not serve to justify violation of the provisions of Article 4351 or of Constitution, Article 3, Section 44.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

*R. W. Fairchild*

R. W. Fairchild  
Assistant

RWF-ER

Enclosure

JAN 9, 1948

*Gerard C. Mann*

ATTORNEY GENERAL OF TEXAS

